

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
OCT 29 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Interexchange Carrier Purchases of Switched)	CCB/CPD File No. 98-63
Access Services Offered by Competitive)	
Local Exchange Carriers)	
)	
Petition of U S West Communications, Inc.)	CC Docket No. 98-157
for Forbearance from Regulation as a)	
Dominant Carrier in the Phoenix, Arizona MSA)	

COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Carol Ann Bischoff
Executive Vice President
and General Counsel
COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1900 M Street N.W., Suite 800
Washington, D.C. 20036
(202) 296-6650

Robert J. Aamoth
Joan M. Griffin
KELLEY DRYE & WARREN LLP
1200-19th Street N.W., Suite 500
Washington, D.C. 20036
(202) 955-9600

October 29, 1999

No. of Copies rec'd 0110
List ABCDE

TABLE OF CONTENTS

I.	ESTABLISHING BENCHMARK RATES FOR CLEC TERMINATING ACCESS WILL ELIMINATE ANY QUESTION ABOUT THE REASONABLENESS OF CLEC ACCESS CHARGES WHILE AVOIDING INTENSIVE RATE REGULATION OR INTERFERENCE WITH THE OPERATIONS OF THE MARKET.....	2
II.	CONSIDERATION OF A CAPACITY-BASED RATE STRUCTURE FOR LOCAL SWITCHING IS PREMATURE AND WITHOUT FOUNDATION.	5
III.	PROPOSALS FOR GEOGRAPHIC DEAVERAGING OF SWITCHED ACCESS CHARGES ARE INAPPROPRIATE IN LIGHT OF THE RECENTLY ESTABLISHED PHASE I PRICING FLEXIBILITY FRAMEWORK AND THE CURRENT STATE OF ACCESS CHARGE REFORM.	8
IV.	THERE IS NO BASIS FOR ADOPTING PHASE II PRICING FLEXIBILITY REQUIREMENTS AT THIS TIME.....	9
V.	CONCLUSION.....	10
	SUMMARY.....	i

SUMMARY

The Commission's *Further Notice of Proposed Rulemaking* ("FNPRM") on access charge reform proposes a number of changes to the FCC's existing access charge rules. The Competitive Telecommunications Association ("CompTel") provides its views on the following issues in these Comments.

CompTel recommends that the FCC establish a "benchmark rate" for CLEC terminating access charges. Any CLEC terminating access charge that is at or below the relevant benchmark would be presumed reasonable; rates in excess of the benchmark could trigger Commission review and require the submission of cost support. A benchmark approach would eliminate any question about the reasonableness of CLEC terminating access charges, and would not impose overly burdensome regulatory requirements on the CLECs. Also, a benchmark rate approach would be less burdensome for the Commission to implement and administer, and less disruptive for consumers, than other approaches suggested in the *FNPRM* (e.g., "called-party-pays").

In addition, CompTel believes that there is no basis for considering a capacity-based rate structure for local switching at this time. States that have been studying the cost of local switching in the context of investigating the costs of local calls have not advocated cost recovery through a capacity charge. Furthermore, adoption of a capacity-based rate structure would impose significant new administrative costs on the industry. As such, there is no need to change the local switching rate structure at this time.

Also, CompTel opposes the Commission's proposal to allow price cap ILECs to geographically deaverage switched access charges. Granting such regulatory relief to the ILECs at this time would be inappropriate and premature. The Commission should evaluate the impact of its Phase I pricing flexibility rules on the industry and the public before granting additional

regulatory relief to the ILECs. The FCC should also first complete its consideration of the CALLS proposal, and other proposals for access charge reform, as these proposals would have a significant impact on switched access revenue recovery for price cap ILECs if adopted.

Finally, there is no basis for adopting Phase II pricing flexibility requirements at this time. Until the industry and the Commission have had “real world” experience with Phase I regulatory relief, any consideration of the requirements for Phase II is inappropriate.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Interexchange Carrier Purchases of Switched)	CCB/CPD File No. 98-63
Access Services Offered by Competitive)	
Local Exchange Carriers)	
)	
Petition of U S West Communications, Inc.)	CC Docket No. 98-157
for Forbearance from Regulation as a)	
Dominant Carrier in the Phoenix, Arizona MSA)	

COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby comments on the *Further Notice of Proposed Rulemaking* ("FNPRM") in the above-captioned proceedings.¹ With approximately 350 members, CompTel is the principal national industry association representing competitive telecommunications carriers. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future.

In these comments, CompTel will address four issues. *First*, CompTel proposes that the Commission adopt a benchmark rate approach to ensure the reasonableness of CLEC terminating

¹ *Fifth Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-206, rel. August 27, 1999 ("FNPRM" or "*Fifth Report and Order*").

access charges. Such an approach would readily eliminate any concerns about CLEC terminating rates without unduly burdening either the Commission or the CLECs. *Second*, the Commission's proposal to establish a capacity-based rate structure for local switching is premature. The states are actively considering the cost of the identical functionality as they develop cost-based rates for UNEs and local termination. If there is any merit to a capacity-based approach, the Commission should expect that it would become apparent from these proceedings. CompTel recommends that the Commission defer consideration of this issue until actual cost analyses demonstrates that such an approach could be justified. *Third*, the Commission should postpone any consideration of geographic deaveraging for price cap ILECs, since access charges still exceed costs and the impact of other recently adopted pricing flexibility measures on the market is still unknown. *Finally*, any consideration of the requirements for Phase II pricing flexibility is inappropriate at this time.

I. ESTABLISHING BENCHMARK RATES FOR CLEC TERMINATING ACCESS WILL ELIMINATE ANY QUESTION ABOUT THE REASONABLENESS OF CLEC ACCESS CHARGES WHILE AVOIDING INTENSIVE RATE REGULATION OR INTERFERENCE WITH THE OPERATIONS OF THE MARKET.

In the *FNPRM*, the Commission seeks comment on various market-based and regulatory approaches for ensuring the reasonableness of CLEC access charges.² As discussed below, CompTel recommends that the FCC establish an approach to CLEC access charges that minimizes regulatory involvement while avoiding unnecessary and harmful market disruptions.

CompTel believes that the FCC's benchmark proposal³ provides the basis for a viable resolution. In particular, CompTel proposes that the Commission establish a "safe harbor"

² *FNPRM* at ¶¶ 236 *et seq.*

³ *FNPRM* at ¶ 247.

whereby any CLEC terminating access charge⁴ that is equal to or less than a benchmark access rate would be presumed reasonable. The benchmark rate would be the CLEC's choice of the comparable access charge of an ILEC serving the same territory⁵ or some other rate that the Commission may determine to be a reasonable proxy.

To implement this approach, the Commission could require all CLECs to include in their tariff transmittals a statement as to whether the access rate proposed falls within the "safe harbor." Where the CLEC affirms that the proposed access rate exceeds the relevant benchmark, the FCC would suspend the tariff for one day subject to an accounting order and begin an investigation. The Commission would then establish an expeditious pleading schedule whereby the CLEC would submit cost justification, interested carriers would respond, and the CLEC would submit a reply. To ensure the rapid availability of CLEC access services, it would be advisable to resolve all such investigations as quickly as possible.

CompTel believes that use of a benchmark approach such as proposed above would eliminate any question about the reasonableness of CLEC terminating access charges, while at the same time avoiding the need for the Commission to engage in intensive rate regulation or interfere with the workings of the market. We agree with the FCC that it is difficult to compare ILEC and CLEC access charges, as they may have different rate structures – for example, some CLECs do not assess a PICC. In addition, CLECs may have higher access costs than established ILECs because they have high start-up costs. Low traffic volumes, fewer customers and smaller geographic regions may make it impossible for CLECs to achieve unit costs as low as the ILECs.

⁴ CompTel does not see any current problem with CLEC originating access charges and thus CompTel's proposal would apply only to terminating access rates.

⁵ Because CLECs frequently serve territories of multiple ILECs, it would be appropriate for the CLEC's rate to reflect a blending of the rates of the ILECs in whose territories the CLEC provides service.

Under these circumstances, use of ILEC or other established rates as a benchmark for CLEC terminating access charges would be an administratively simple way of ensuring that CLEC terminating access rates are not excessive. A benchmark approach would be less burdensome for the FCC in other ways as well. Most notably, it would avoid the need for the Commission to revisit its previous determination that CLECs lack market power and therefore should be regulated as non-dominant carriers.

CompTel believes that it is premature for the Commission to rely exclusively on a market-based solution, particularly one that could result in providers of long distance services blocking calls to one or more selected CLECs. Such an approach would result in severe disruptions in the ubiquitous network-to-network interconnections that are necessary for the industry to grow and for all consumers to be able to use their chosen carrier to reach the called party. The “called-party-pays” and “end-user-pays” approaches discussed in the *FNPRM*⁶ would also cause serious consumer confusion, as the Commission has previously recognized.⁷ CompTel opposes both of these approaches, as they are expensive to administer and implement, and would ultimately result in higher rates for consumers.⁸

In light of these facts, CompTel urges the Commission to implement a benchmark rate approach to ensure the reasonableness of CLEC terminating access charges.

⁶ *FNPRM* at ¶¶ 249-252.

⁷ See Access Charge Reform, *First Report and Order*, 12 FCC Rcd 15982, 16138 (1997) (“*Access Reform First Report and Order*”).

⁸ Mandatory detariffing is also not a solution to the problem of CLEC terminating access charges. The Commission does not have the authority to mandate detariffing, as the Commission’s forbearance authority under Section 10 does not extend to express regulatory requirements set forth elsewhere in the Act. Furthermore, and as the Commission observes in the *FNPRM*, the FCC’s decision to require mandatory detariffing by IXCs has been stayed by the U.S. District Court of Appeals for the District of Columbia Circuit, and the Court’s ultimate decision will likely implicate the Commission’s ability to impose mandatory detariffing on CLECs. *FNPRM* at ¶ 246.

II. CONSIDERATION OF A CAPACITY-BASED RATE STRUCTURE FOR LOCAL SWITCHING IS PREMATURE AND WITHOUT FOUNDATION.

In the *FNPRM*, the Commission proposes various rule changes that would require price cap ILECs to develop capacity-based local switching charges.⁹ The *FNPRM* proposes to “replace” the current per-minute rate structure for local switching with capacity-based rates.¹⁰ As a threshold matter, it is not clear what the Commission means by “replace.” As the Commission is aware, one important use of the local switch in the access environment is its use in the provision of common transport. In this configuration, there is no individual carrier to whom a “capacity-based” charge could be assessed. In this context, even if a “capacity-based” cost could be shown to exist (a conclusion that is very much in question), it still would be necessary to recover such costs in usage rates because of the shared nature of the service.

More to the point here, however, is the fact that there is little or no basis for the Commission’s presumption that a capacity-based structure is justifiable. CompTel notes that the states have been actively investigating the cost of essentially the identical functionality – most specifically, the cost to transport and terminate a “local” call – in fulfillment of their responsibilities under the Telecommunications Act. To the best of CompTel’s knowledge and belief, no state has determined in the course of such study that the economic costs of local switching are most appropriately recovered in a capacity charge.¹¹ That is, after more than three

⁹ *FNPRM* at ¶¶ 207 *et seq.*

¹⁰ *FNPRM* at ¶ 207.

¹¹ Illinois has established a capacity-based charge for the local switching UNE that is incurred for each *end-user* connection. This rate, however, is based on the role of the local switching UNE as providing its purchaser a claim on the full resources of the local switch to provide end-user services. Charges to other carriers for the temporary use of the local switch – such as access and the termination of local calls – continue to be levied on the basis of usage.

years of investigating *actual* cost studies, the relationship posited by the Commission's Notice has not surfaced in – much less dominated – the (otherwise) vigorous debate of how these costs are really incurred.

It is CompTel's view that the Commission's guiding access pricing principle should be to eliminate the discrimination between "local" and "long distance" calls by moving to a "minute-is-a-minute" pricing regime for all traffic. Such an approach is not only sound economics, but also would promote administrative savings as well as encourage carriers to compete on the basis of new and innovative local calling areas.¹² As such, CompTel believes that the Commission should establish its access policies to drive rates to cost-based levels as determined by those state commissions that are conducting relevant cost studies, rather than impose some "national" rate structure developed without the benefit of any cost analysis.

Finally, the Commission should be aware that its capacity-based proposal would impose significant new administrative costs on the industry. As noted above, the proposal would immediately require adjustments for instances where the local switch is used to provide common transport to avoid any discrimination between users of common transport and carriers that purchase dedicated transport. Even more problematic would be the effect of the proposal on the *billing* of access services by carriers that have purchased the unbundled local switching (ULS) network element.

Unbundled local switching (ULS) allows multiple exchange carriers (CLECs and ILECs) to share a single local switch, with each CLEC (as well as the ILEC) responsible for providing access service with respect to its own end-users. Under the existing *usage-based* rate structure, it

¹² Today, disparate rates for "local" and "long distance" call termination have had the effect of requiring that CLECs generally adopt the same local calling area as the incumbent. This has the effect of denying consumers the full benefit of competitively-driven local calling areas which could be an important area of product differentiation.

is relatively simple for these ULS-based carriers to track and bill for their access service – each minute of access usage can be uniquely attributed to a particular exchange carrier and a specific IXC. If the Commission were to require a capacity-based approach, however, then an entirely new procedure would be needed to bill and share the capacity-charge. The “capacity” purchased by an interexchange carrier would provide access to all of the exchange carriers providing service from the local switch, yet there would be no easy way to apportion the revenue from this charge among them.

ULS-based competition is just now finally moving forward after nearly four years of litigation. The Commission should not further complicate this entry by adopting a new access rate structure whose merits, if any, are modest at best. The existing access rate structure is working. It is compatible with the emergence of widespread UNE-based local (and access) competition that is finally possible when ILECs comply with the Commission’s UNE combination rules. There is no access “problem” that is solved by the Commission’s proposed rate structure.

The Commission should strive to conform its access rates to cost-based levels determined by the states, and allow the existing process of state cost-analysis to test the hypothesis that a capacity-based approach is more “cost-based.” There is no need to change the local switching rate structure at this time.

III. PROPOSALS FOR GEOGRAPHIC DEAVERAGING OF SWITCHED ACCESS CHARGES ARE INAPPROPRIATE IN LIGHT OF THE RECENTLY ESTABLISHED PHASE I PRICING FLEXIBILITY FRAMEWORK AND THE CURRENT STATE OF ACCESS CHARGE REFORM.

CompTel opposes the Commission's proposal to permit price cap ILECs to deaverage interstate common line and traffic-sensitive access charges within study areas.¹³ There is no justification for granting this form of regulatory relief to price cap ILECs at this time. The FCC has only recently established its "Phase I" pricing flexibility framework, which will allow price cap ILECs to offer contract tariffs, as well as volume and term discounts, for certain switched access services provided within specific metropolitan statistical areas ("MSAs") once certain competitive showings are made.¹⁴ The Commission should monitor the impact of granting pricing flexibility under the *Fifth Report and Order* before engaging in any consideration of geographic deaveraging.

A "wait and see" approach is particularly appropriate since it is far from clear how deaveraging would be accomplished or what its consequences would be. It is difficult to see how the Commission could fully evaluate the likely impact of geographic deaveraging at this time, since access charge reform is an ongoing process. Indeed, the Commission is currently considering various proposals (e.g., the CALLS proposal)¹⁵ that would, if adopted, dramatically alter switched access revenue recovery for price cap ILECs.

In any event, the FCC cannot permit the price cap ILECs to geographically deaverage their switched access rates at this time, since as noted previously, access charges are still

¹³ *FNPRM* at ¶ 190 *et seq.*

¹⁴ *Fifth Report and Order* at ¶ 69.

¹⁵ *See Access Charge Reform, Notice of Proposed Rulemaking (CALLS Proposal)*, FCC 99-235, rel. Sept. 15, 1999.

substantially in excess of cost. Further, the ILECs have not yet made available UNE combinations involving unbundled local switching and enhanced extended link (EEL) that are necessary to bring competitive pressure on a more geographically broad scale. So long as access charges are above cost, any geographic deaveraging would be inherently arbitrary. Simply put, there is no reasonable cost-based way to geographically deaverage non-cost based rates.

In light of these facts, CompTel recommends that the Commission defer any action on its geographic deaveraging proposal until a later date.

IV. THERE IS NO BASIS FOR ADOPTING PHASE II PRICING FLEXIBILITY REQUIREMENTS AT THIS TIME.

For the same reasons, CompTel objects to the Commission's proposal to establish at this time the parameters of its Phase II pricing flexibility framework -- specifically, the regulatory relief that will be granted to price cap ILECs for common line and traffic sensitive services, and the circumstances that will trigger grant of that relief.¹⁶ As recognized by the Commission, the market for common line and traffic sensitive services is by no means competitive. Furthermore, and as discussed in the previous section, the Commission has already adopted rule changes -- the Phase I pricing flexibility framework -- that will give considerable freedom to price cap ILECs and that have not yet been tested in practice. Until the industry and the Commission have had the opportunity to evaluate Phase I relief in marketplace conditions, any consideration of the requirements for Phase II relief is inappropriate.

¹⁶ *FNPRM* at ¶ 201.

V. CONCLUSION

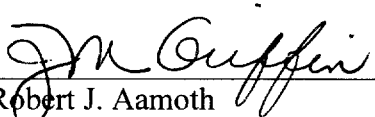
CompTel respectfully requests that the Commission take action as specified herein and in previous CompTel comments in these proceedings.

Respectfully Submitted,

**COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION**

Carol Ann Bischoff
Executive Vice President
and General Counsel
COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1900 M Street N.W., Suite 800
Washington, D.C. 20036
(202) 296-6650

October 29, 1999

By: 
Robert J. Aamoth
Joan M. Griffin
KELLEY DRYE & WARREN LLP
1200-19th Street N.W., Suite 500
Washington, D.C. 20036
(202) 955-9600

Its Attorneys